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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,784	06/09/2006	Anthony Scott Oddo	60136.0105USWO	2599
94140	7590	05/26/2010		
Merchant & Gould - Cox PO Box 2903 Minneapolis, MN 55402				
EXAMINER				
LEWIS, JONATHAN V				
ART UNIT		PAPER NUMBER		
2425				
MAIL DATE		DELIVERY MODE		
05/26/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/552,784

Applicant(s)

ODDO ET AL.

Examiner

JONATHAN LEWIS

Art Unit

2425

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Brian T. Pendleton/
Supervisory Patent Examiner, Art Unit 2425

Cont. of 11. does NOT place the application in condition for allowance because: the argued features, ie. providing content recommendation to the device when a channel change even is detected, allowing the user to selectively view recommended content or content of the selected channel, and the content recommendation is provided to the user prior to allowing the user to view the content of the selected channel are in fact taught by the prior art of record as follows. First, the teaching of "providing content recommendation to the device when a channel change event is detected" is provided by the reference Danker et al.. Danker teaches "a viewing device is monitored for a specific event, such as a channel change... [w]hen the event is detected, a user is prompted to notify the user of the availability of video on demand content related to the channel." This clearly shows the feature of recommending content, the video on demand, in response to the channel change. Secondly, Gutta teaches the last two argued features, claimed as one limitation, the claim reads in part: "allowing the user to selectively view on the content viewing device the recommended content or content of the selected channel, wherein the content recommendation is provided by the content recommendation engine to the content viewing device of user prior to allowing the user to view the content of the selected channel on the content viewing device." This portion of the claim is constructed such that in order to fulfill the claim language only 2 things must occur: 1. the user must be allowed to view the content of the selected channel, which virtually all cable systems do, and 2. if the first portion of the "or" limitation is utilized, then the content recommendation must be provided to the device prior to viewing, which virtually all cable systems also do via a channel buffer, or more simply any processor. However, the prior art of record also reads on the intent of the claim language as follows: the abstract discloses that program recommendations are made via decision trees of the EPG. An electronic program guide by nature shows channels which are not currently tuned to, but are available for selection. By this logic the first limitation is satisfied, as well as the second, since the EPG shows a description of recommended programming before it is tuned to. Therefore, examiner maintains his rejection.

Jonathan Lewis
Art Unit 2425
5/20/2010